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| EXAMINER |
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FIDEI, DAVID

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| ART UNIT | PAPER NUMBER |
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3728

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,726

Applicant(s)

SCHMIDT ET AL.

Examiner

David T. Fidei

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9,12-14,17 and 31-34 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-9,12-14,17 and 31-34 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 22 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/17/03.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 2, said first solid substance and said second solid substance lacks antecedent basis. The requirement of 35 U.S.C. 112, second paragraph can be easily overcome by deleting “solid” in both occurrences.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ward (Patent no. 5,087,273). In figure 2 there is disclosed a gas-permeable enclosure; a first solid substance within said gas-permeable enclosure in the upper compartment; a second solid substance within said gas-permeable enclosure in the lower compartment; and a mechanism segregating 6 said first solid substance from said solid second substance.

The enclosure is capable of functioning as claimed “wherein” opening the stitching mechanism 6 allows mixing of said first solid substance with said second solid substance inside said gas-permeable enclosure. The gas-permeable enclosure allowing any gas, or volatilization of the aromatic 7, that is produced by mixing said first solid substance with said second solid substance to permeate through the gas-permeable enclosure without rupturing the gas-permeable

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enclosure. Support for this conclusion is found in col. 3, lines 27 to 32 where 60% open mesh space permits significant air circulation.

As to claim 12, a synthetic mesh is contemplated in col. 3, line 26 that is considered a film in as much as is claimed.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holzner (Patent no. 4,534,509) in view of Japanese document 2000191053 and Pendergrass Jr., (Patent no. 5,395,047). Holzner discloses a package comprising having a first substance in compartment 5 and a second substance in compartment 6, e.g., see the embodiment of figure 1. The difference between the claimed subject matter resides in a plastic zipper segregating the first substance from the second substance.

Japanese document 2000191053 discloses that it is well known to construct packages with zipper closures separating the compartments as shown in figures 4-6. Whereas Holzner employs a rupturable member requiring greater manual dexterity to permit separation. It would have been obvious to one of ordinary skill in the art to modify the package of Holzner by

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employing a zipper as taught by Japanese document 2000191053, in order to permit a more easily grasped and separated compartment structure.

It is noted that Holzner employs an upper ear section with a hole for supporting the package, col. 4, lines 51, 52. To employ an adhesive with a cover detachably mounted thereto as taught by Pendergrass, Jr. figure 2, #16, #20 would have been an obvious equivalent manner of supporting the package.

As to claim 2, at least a portion of the enclosure 6 of Holzner is gas-permeable. Since the solid substances have no antecedent basis, the claim is interpreted as reciting substances.

As to claim 4, a transparent material is contemplated in col. 3, line 68.

As to claim 5, the package enclosure is formed of first and second layers as shown in the embodiments in figures 2 and 3. The sealed perimeter 7 of the layers forms an enclosure as recited in claim 6.

As to claims 7-8, Japanese document 2000191053, discloses tabs 7 adjacent the zipper as is well known in this art.

As to claim 9, the compartments of Holzner appear equal in figures 2 and 3.

As to claim 3, page 5, lines 24 and 25 of the present invention indicates no criticality as to whether the substances are a "gas, liquid or solid". It would have been obvious to one skilled in the art at the time the invention was made to employ solid substances as a matter of design choice for the reason that the particular state of the substance employed is of no criticality as one skilled in the art would have found the implementation of any solid substance dependent upon the particular compositions one desires to mix.

8. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Renner (document WO 95/053237) in view of Holzner (Patent no. 4,534,509). It is stated in the PCT/US2004/013181 Written Opinion that Renner teaches the use of gas permeable enclosure having apertures, in the form of vents, to permit gases produced by the chemical reaction during mixing to escape. The difference between the claimed subject matter and Renner reside in a gas-permeable enclosure that permits permeation without rupture.

Holzner col. 2, lines 50-59, states a pouch made of a polymer material has been developed that permits diffusion of gas therethrough. It would have been obvious to one of

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ordinary skill in the art to modify the plastic foils of Renner by employing a diffusing polymer as taught by the prior art statement in Holzner, in order to provide a release of gas build up without the need of constructing a separate rupturable chamber.

As to claim 13, it appears a polymer that permits gas-diffusing therethrough can only result from a plurality of apertures, or pores, sufficiently sized to permit gas to transfer through the material.

As to use of solid substances and the particular materials of claim 14, it is not known what type of substances are mixed by Ranner. However, page 5, lines 24 and 25 of the present invention indicates no criticality as to whether the substances are a "gas, liquid or solid". It would have been obvious to one skilled in the art at the time the invention was made to employ solid substances would have been a matter of design choice for the reason that the particular state of the substance employed is of no particular criticality as one skilled in the art would have found the implementation of solid substance dependent upon the particular compositions one desires to mix.

9. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Renner (document WO 95/053237) in view of Muysson (Patent no. 5,164,178). It is stated in the PCT/US2004/013181 Written Opinion that Renner teaches the use of gas permeable enclosure having apertures, in the form of vents, to permit gases produced by the chemical reaction during mixing to escape. The difference between the claimed subject matter and Renner reside in a gas-permeable enclosure that permits permeation without rupture.

Muysson teaches a package with microcapsules broken to release gas/perfume deodorant by means of a plurality of apertures 6. Hence any argument that the mixing contemplated by package of Renner would impair the 7 of Muysson would not be persuasive in view of the impacts or crushing contemplated by Muysson, see the abstract. To provide the device of Renner with a plurality of apertures would have been an art recognized equivalent manner of venting gas as evidenced by Muysson.

As to use of solid substances and the particular materials of claim 14, it is not known what type of substances are mixed by Ranner. However, page 5, lines 24 and 25 of the present invention indicates no criticality as to whether the substances are a "gas, liquid or solid". It

would have been obvious to one skilled in the art at the time the invention was made to employ solid substances as a matter of design choice for the reason that the particular state of the substance employed is of no particular criticality as one skilled in the art would have found the implementation of solid substance dependent upon the particular compositions one desires to mix.

10. Claims 17 and 31-34 rejected under 35 U.S.C. 103(a) as being unpatentable over Renner (document WO 95/053237) in view of Holzner (Patent no. 4,534,509). as applied to claims 12-14 above, and further in view of Detrie et al (Patent no. 2,916,197).

The difference between the claimed subject matter resides in a zipper segregating the first substance from the second substance along with a tab attached to the each layer of the package.

It is well known to construct packages with zipper closures separating compartments with tabs attached on opposite sides as shown Detrie et al in figures 6-9. It would have been obvious to one of ordinary skill in the art to modify the package of Renner by employing a zipper as taught by Detrie et al, in order to permit a more easily grasped and separated compartment.

As to claim 32, it appears a polymer that permits gas diffusing there through can only result from a plurality of aperture, or pores, sufficiently sized to permit gas to transfer through the material.

As to claim 35, it would have been obvious to one skilled in the art at the time the invention was made to employ ferric and sodium chlorite substances as a matter of design choice for the reason that the particular substance employed is of no particular criticality as one skilled in the art would have found the implementation of any solid substance dependent upon the particular compositions one desires to mix.

Response to Arguments

11. Applicant's arguments filed February 3, 2006 have been fully considered but they are not persuasive. The rejections of page 7 of the previous Office Action are addressed under 35 U.S.C. 103(a). It is not surprising that one would not find a single reference having all the subject matter disclosed by a claim/claims applied under this statute. Rather Riese as applied on page 7 of the previous Office Action is a modifying reference and applicants comments noting

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Riese fails to an adhesive obscured by a cover is not understood. The same type of arguments are advanced with regard to Detrie et al not anticipating an adhesive on an outer surface with a detachably mounted cover.

Also, with regard to Detrie et al, Applicant's failure to locate a gas permeable material, in as much as the Examiner produced evidence indicating Polyethylene or cellophane and cellulosic material are permeable, can be found in Detrie et al col. 3, lines 19 and 20. Here such a material is clearly set forth. Even though Applicant traverses the finding, the dictum Detrie et al is simply not permeable because it makes no sense, is not convincing. These comments are respectfully provided so that Applicant does not conclude the limitations were not previously thoroughly considered.

From a realistic point, practically all thermoplastic films are "gas-permeable" to some extent. As the undersigned has had this pointed out by a Patent Judge on review in a similar circumstance. Hence, it makes no sense to ague the point without some type of parameters defining the extent of permeability. It also appears from the disclosure that the present invention is not concerned with setting forth such limitations.

In any event Applicant's arguments with respect these and further issues are moot in view of the new grounds of rejection necessitated by amendment.

Objection to the Drawings

12. This application has been filed with drawings, which are not objected to by the Examiner. It appears the previous PTO-326 was incorrectly marked.

Information Disclosure Statement

13. Applicant's assertion regarding the timeliness of IDS is correct and the documents have been considered.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The Official Fax number to file responses to this Office Action is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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David T. Fidei
Primary Examiner
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dtf
April 17, 2006